

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 89 **25**

By: Trial Section Merits Panel  
Board of Patent Appeals and Interferences  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Tel: 571-272-9797  
Fax: 571-273-0042

Filed: 16 September 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

---

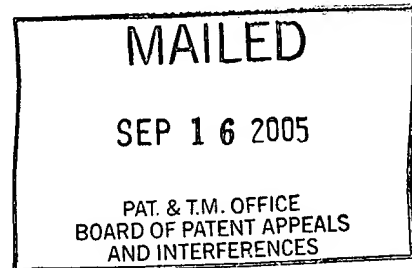
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

PECHINEY EMBALLAGE FLEXIBLE EUROPE  
Junior Party,  
U.S. Patent 6,437,064

v.

CRYOVAC, INC.  
Senior Party,  
Application 08/996,367  
Application 09/583,654



---

Patent Interference No. 105,092

---

Before: McKELVEY, Senior Administrative Patent Judge, and SCHAFER and SPIEGEL, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.<sup>1</sup>

**FINAL JUDGMENT - PRIORITY - Bd. R. 127(d)**

---

<sup>1</sup> As part of the Board's efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, in this case papers originating at the Board will not have signatures. The signature requirements for the parties have not changed. See e.g., 37 C.F.R. § 10.18.

Upon consideration of "PECHINEY REQUEST FOR ADVERSE JUDGMENT"  
(Paper 76) and our "DECISION - REHEARING - Bd. R. 125(c)" (Paper 88), it is

ORDERED that judgment on priority as to Count 1 (Paper 1, page 6), the sole  
count in the interference, is awarded against junior party JOHN P. ECKSTEIN,  
JOHNNY Q. ZHENG, MARK E. NORDNESS, KEITH D. LIND, GEORGE H. WALBURN,  
MARY E. SHEPARD, GREGORY K. JONES and GREGORY J. SEEKE (**Pechiney**);

FURTHER ORDERED that junior party JOHN P. ECKSTEIN, JOHNNY Q.  
ZHENG, MARK E. NORDNESS, KEITH D. LIND, GEORGE H. WALBURN, MARY E.  
SHEPARD, GREGORY K. JONES and GREGORY J. SEEKE (**Pechiney**) is not entitled  
to a patent containing claims 1-3, 6-19 and 22-39 (corresponding to Count 1) of U.S.  
Patent No. 6,437,064;

FURTHER ORDERED that senior party KELLY R. AHLGREN, ROBERT  
BABROWICZ, SOLOMON BEKELE, BLAINE C. CHILDRESS, MARVIN R. HAVENS,  
RONALD MOFFITT, GAUTAM P. SHAH and GEORGE WOFFORD (**Cryovac**) is not  
entitled to a patent containing claims 1, 3-5, 7, 10-14 and 20-26 of application  
09/583,654;

FURTHER ORDERED that a copy of this paper, a copy of "ORDER – RULE  
121(f)" (Paper 81) and a copy of "DECISION - REHEARING - Bd. R. 125(c)" (Paper 88)  
shall be made of record in files of U.S. Patent No. 6,437,064 and U.S. applications  
08/996,367 and 09/583,654; and

FURTHER ORDERED that if there is a settlement agreement which has not been filed, attention is further directed to 35 U.S.C. § 135(c) and 37 CFR § 41.205.

|                                |   |                 |
|--------------------------------|---|-----------------|
| <u>\ss\ Fred E. McKelvey</u>   | ) |                 |
| FRED E. McKELVEY, Senior       | ) |                 |
| Administrative Patent Judge    | ) |                 |
|                                | ) |                 |
| <u>\ss\ Richard E. Schafer</u> | ) | BOARD OF PATENT |
| RICHARD E. SCHAFER             | ) | APPEALS AND     |
| Administrative Patent Judge    | ) | INTERFERENCES   |
|                                | ) |                 |
| <u>\ss\ Carol A. Spiegel</u>   | ) |                 |
| CAROL A. SPIEGEL               | ) |                 |
| Administrative Patent Judge    | ) |                 |

cc: (via overnight mail):

Pechiney Emballage Europe

Steven Z. Szczepanski, Esq.  
Mary Jo Boldingh, Esq.  
KELLEY, DRYE & WARREN LLP  
333 W. Wacker Drive, Suite 2600  
Chicago, IL 60606  
Tel: 312-857-7070  
Fax: 312-857-7095

Cryovac, Inc.

Michele C. Bosch, Esq.  
Mark D. Sweet, Esq.  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
1300 I Street, N.W., Suite 700  
Washington, D.C. 20005-3315  
Tel: 202-408-4000  
Fax: 202-408-4400